

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR., and ROSLYN)
WOODARD SMITH, individually and as)
Administrators of the ESTATE OF HARRY)
SMITH, III)

Plaintiffs,)

v.)

C.A. No. 04-1254-GMS

CITY OF WILMINGTON, JOHN)
CIRITELLA, THOMAS DEMPSEY and)
MATTHEW KURTEN,)

Defendants.)

NOTICE OF SUBPOENA

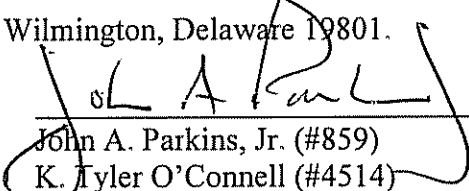
TO: Kester I. H. Crosse, Esquire
Williams & Crosse
1214 King Street
Suite 300
Wilmington, Delaware 19801

Anne T. Sulton, Esquire
Post Office Box 2763
Olympia, Washington 98507

PLEASE TAKE NOTICE that on November 7, 2005, pursuant to Fed. R. Civ. P. 45, the
attached subpoena will be served on the Office of the Chief Medical Examiner, Forensic
Sciences Laboratory, 200 South Adams Street, Wilmington, Delaware 19801.

OF COUNSEL:

Rosamaria Tassone
City of Wilmington Law Department
City/County Building, 9th Floor
800 N. French Street
Wilmington, Delaware 19801
302-576-2175


John A. Parkins, Jr. (#859)
K. Tyler O'Connell (#4514)
Richards, Layton & Finger
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
302-651-7700
parkins@rlf.com
ocConnell@rlf.com
Attorneys for Defendants

Dated: November 7, 2005

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
 DISTRICT OF DELAWARE

Harry Smith, Jr. and Roslyn Woodard Smith,
 Individually And As Administrators of the
 Estate of Harry Smith, III,

SUBPOENA IN A CIVIL CASECase Number:¹ 04-1254-GMS

v.

Wilmington Police Department, John Ciritella,
 Thomas Dempsey and Matthew Kurten.

TO: Office of the Chief Medical Examiner
 Forensic Sciences Laboratory
 200 South Adams Street
 Wilmington, DE 19801

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

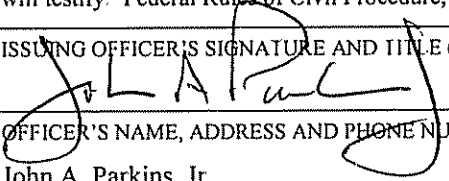
- ☒ YOU ARE COMMANDED to preserve and produce the following documents or objects (list documents or objects):
See Attached Schedule A

PLACE: Richards, Layton & Finger, P.A., One Rodney Square, P.O. Box 551, Wilmington, DE 19899	DATE AND TIME November <u>28</u> , 2005
--	--

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6)

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney For Defendants	DATE November 7, 2005
--	--------------------------

OFFICER'S NAME, ADDRESS AND PHONE NUMBER
 John A. Parkins, Jr.
 Richards, Layton & Finger, PA
 One Rodney Square, P.O. Box 551
 Wilmington, Delaware 19899
 (302) 651-7700

¹ If action is pending in district other than district of issuance, state district under case number
 RLF1-2942793-1

AO88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE		PLACE	
SERVED			
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Schedule A

Documents To Be Produced

1. All documents, including (but not limited to) reports, correspondence, notes, photographs, x-rays, videotapes, audio tapes, test results and laboratory results relating to the autopsy and any other investigation into the death of Harry Smith, III (Autopsy: 2003-1434).

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

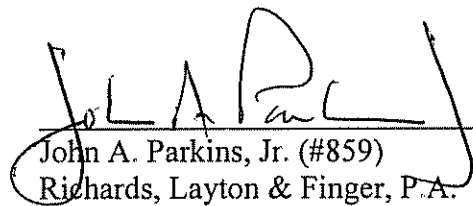
CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2005, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) and Hand Delivered to the following:

Kester I.H. Crosse, Esquire
Williams & Crosse
1214 King Street
Suite 300
Wilmington, DE 19801

I hereby certify that on November 7, 2005, I have sent by U.S. Regular Mail, the foregoing document to the following non-registered participants:

Anne T. Sulton, Esquire
Post Office Box 2763
Olympia, WA 98507


John A. Parkins, Jr. (#859)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
Parkins@rlf.com